

UNITED STATES OF AMERICA
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

TRANSCRIPT OF PROCEEDINGS OF TELEPHONE STATUS
HEARING BEFORE JUDGE DAN A. POLSTER, JUDGE OF
SAID COURT, ON WEDNESDAY , NOVEMBER 4TH, 2020,
COMMENCING AT 1:00 O'CLOCK p.M.

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P R O C E E D I N G S

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MS. NORTON: Judge, I made sure that the court reporter is on along with Molly, David, Magistrate Judge Ruiz, Mary, and Cathy Yannie from our team.

5

Everyone is on the line from the joint status report save two attorneys: Troy Rafferty for the PEC and Scott Livingston, I believe. I thought there was one more; might have been three. No. Okay. Go ahead, Judge. I am going to mute this line.

10

THE COURT: All right. Thank you. All right.

12

Good afternoon, everyone. This is a status call in the opioid MDL. It is the first time where we have had everyone together for sometime. I appreciate all the status reports. I received the main one plus all the follow-on.

17

I really just had a couple of things to say, and fortunately, just yesterday and today, there was a public announcement that the three distributors, McKesson, Cardinal, and AmerisourceBergan, the Big Three distributors have settled their cases with the subdivisions and the states.

23

And previously, Johnson & Johnson had announced that it had settled. So it was a coordinated settlement. Obviously, it took a long time. People have

1 been working on it since last fall of 2019. So I
2 appreciate all of the hard work by many of the lawyers on
3 the phone and their clients getting that done.

4 And from where I sat, I didn't think there
5 would be meaningful settlement discussions with other
6 Defendants until this got finalized. And so that's all I
7 really have to say.

8 The cities, the counties, and states
9 desperately need this money to deal with the opioid
10 epidemic, and they were strapped before March of this
11 year, and as a result of the COVID-19 pandemic, every
12 city, county, and state is stretched far, far thinner and
13 far less tax levy coming in. So they desperately need
14 the money.

15 The Defendants need to focus their attention
16 on assisting the country dealing with the COVID-19
17 pandemic. That's what we are all dealing with. We will
18 get through it hopefully, but every one of the Defendants
19 is in the medical pharmaceutical industry, that's where
20 their attention should be.

21 It is virtually impossible for any court,
22 state or federal, to actually conduct a one or two-month
23 jury trial right now. I know Judge Gargiulio has one --
24 planning to do one in early 2021. I hope he is able to
25 do it. It will be a challenge. I had to postpone mine

1 that was supposed to begin next week. I have one
2 scheduled for May.

3 So everyone's attention should be focused on
4 resolution this time, and if the parties want my help
5 with the Special Masters' assistance, that's fine. If
6 they want to do it themselves or use -- hire someone,
7 that's fine.

8 The suggestion that we need more bellwether
9 trials scheduled, I think we candidly have enough
10 already. There is an active case being worked up in
11 Chicago. Judge Breyer has one in San Francisco. There
12 is one in Oklahoma with respect to the tribes, and if
13 there is no global settlement or case specific
14 settlement, those cases will be tried as soon as courts
15 are able to schedule lengthy jury trials. I, of course,
16 have one in May with the pharmacies.

17 So if the Court decides it is necessary to
18 schedule or to set up another bellwether trial, one or
19 more, I am not going to do it on my own. I would ask for
20 suggestions from the parties as I did in the past.

21 There is a lot of stuff in these various
22 reports about Allergan and Teva having discovery. I am
23 really not too concerned about that. If you have
24 discovery issues, you can contact Special Master Cohen.
25 He will help you work through them. So that's really all

1 I had to say.

2 I think everyone understands that now that
3 Johnson & Johnson and the Big Three distributors have
4 resolved their cases it is time for the other Defendants
5 to figure out with the subdivisions and states how to do
6 it. Again, you can't do it piecemeal.

7 No one is going to settle with the
8 subdivisions without settling with the states, and no one
9 can settle with the states without the subdivisions. I
10 think, candidly, one of the reasons this settlement was
11 announced today took so long is it wasn't -- how shall I
12 put it -- it wasn't coordinated as well as it could have
13 been. Eventually it was, but it took sometime to do
14 that.

15 So really that's all I had to say, other
16 than I don't think it is necessary to have another
17 MDL-wide status conference next month. With that said, I
18 can schedule one. I have been meeting by phone with the
19 pharmacies each month, and I think I should continue to
20 do that because we do have a crowd to work up and get
21 ready, and if there is no settlement, we will hopefully
22 try it next May.

23 And I propose to do that Wednesday, December
24 the 2nd, at 1:00 o'clock p.m., and because the prior week
25 is Thanksgiving, I don't need the status report more than

1 a day in advance. So if I get the joint status report by
2 noon Tuesday, December 1st, that will be fine.

3 So that will be just with the divisions and
4 the pharmacies, and I should indicate -- there was a
5 suggestion that it is necessary to set up another
6 bellwether case with the tribes. I don't really think
7 that's necessary. One is going forward, the Cherokee
8 Nation.

9 I know the tribes actively participated in
10 the settlement discussions with Johnson & Johnson and the
11 Big Three distributors, and I am sure that their cases
12 with those Defendants, they have worked things out.

13 But if a trial is needed, we have got the
14 Cherokee case. All right. With that, is there anything
15 that anyone wants -- anything that anyone wants to raise
16 or feel that it is important for me to take up now?

17 MR. WEINBERGER: Your Honor, this is Peter
18 Weinberger on behalf of the Plaintiffs. I don't have
19 anything specific, but I would defer to Joe Rice to
20 respond if he wishes with respect to any of the issues
21 you have raised and also would invite Steve Skikos to
22 speak on the issue or in response to your comments about
23 the tribes.

24 So let me start with Joe and ask if he has
25 any comments.

1 MR. RICE: Judge, this is Joe. Thank you
2 for having this.

I want to just caution, I don't want the
press to get the wrong idea if this gets out. The
announcements that have been made in the security filings
relate to the economic terms of the settlement. The
injunctive terms are still being worked on.

8 And as you might imagine going from a term
9 sheet to a settlement agreement, the devil is in the
10 details, but everybody is working very hard to try to
11 move that forward as quickly as possible.

12 So if we do that, understanding on the
13 gross filing of the economics, and the PEC is supporting
14 that, and we are still working on a lot of her other
15 details.

16 THE COURT: All right. Well, thank you.
17 The injunctive -- in my view, the injunctive terms
18 prospective changing conduct is as important as -- more
19 important than the dollars because everyone understood
20 that there were things that needed to be changed so this
21 doesn't happen again.

22 And that's the purpose of a non economic
23 relief, and I know a lot of work -- that work has been
24 going on for over two years, really since the MDL began
25 those discussions. So if the parties need my assistance

1 on that, I am happy to get involved. That is going to
2 happen because that's a necessary part of any regular
3 settlement, and it may be with other settlement
4 discussions. Okay.

5 Thank you, Joe.

6 MR. LYNCH: Judge, this is Mark Lynch from
7 McKesson, if I can just follow up with what Joe said.

8 There certainly has been progress made, but
9 some of the press reports are not entirely accurate, and
10 I really would refer anybody to what was said in
11 McKesson's 10-Q that was filed with the SEC yesterday for
12 the exact description of where we are.

13 THE COURT: All right. Well, that's fine.
14 Look at the 10-Q. The fact is the economics have been
15 resolved, and I am confident the rest will be. That was
16 the biggest hurdle. So the point is, everyone can see
17 the economics. Okay?

18 It has been published, so you can see what's
19 being done, and that's important for everyone else to
20 see.

21 Okay. Thank you, Mark.

22 MR. LYNCH: Thank you, your Honor.

23 MR. SKIKOS: Your Honor, this is Steve
24 Skikos.

25 On behalf of the tribal leadership committee

1 and the hundred tribal nations that have cases pending in
2 the MDL, I can tell you that there is a lot of work that
3 is still left to be done. I am going to leave it at that
4 and continue to coordinate with the Special Masters, and
5 if we need your assistance, we will be in touch with you.

6 THE COURT: Okay. Thank you, Steve.

7 Well, again, I know the tribes, the tribal
8 leadership committee has been actively involved in those
9 discussions, and you are not going to have an economic
10 resolution unless the tribal cases are resolved. Okay.

11 Is there anything that any of the Defendants
12 want to say individually or collectively to bring to my
13 attention while we are altogether?

14 (No response.)

15 THE COURT: Okay. All right. Well, I just
16 want to reemphasize, obviously what courts do best is try
17 cases, and that's what lawyers do and work them up and do
18 all the discovery and the depositions. No one can try
19 complex cases now safely and effectively.

20 So at some point, we will be able to, but I
21 don't think anyone can really say for sure. I never ever
22 thought this pandemic was going to be resolved by
23 Memorial Day, but back in March-April, I certainly
24 thought by November we would be doing better as a country
25 and, candidly, right where I am, Northern District of

1 Ohio. I was wrong.

2 So it may be sometime before anyone can
3 actually do a lengthy jury trial safely, so that's why
4 the focus of everyone's attention now should be on
5 resolution if Plaintiffs need it and the Defendants need
6 it.

7 And so, then, the Court is always available
8 24-7 if anyone wants my and/or my Special Masters. All
9 right. So again, I will be talking to the Plaintiffs and
10 to counsel for the pharmacies on December the 2nd at 1:00
11 o'clock and joint status report on December 1st at noon.

12 Have a very good holiday, Thanksgiving
13 Holiday, everyone, and stay safe. And with, that we are
14 adjourned.

15 (All said thank you and good bye.)

16 (Concluded at 1:28 p.m.)

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19 C E R T I F I C A T E

20 I, George J. Staiduhar, do hereby certify
21 that the foregoing is a true and correct transcript of
22 the proceedings herein.

23 s/George J. Staiduhar
24 George J. Staiduhar,
Official Court Reporter

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